

**THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

COMMITTEE ON THE JUDICIARY OF THE )  
U.S. HOUSE OF REPRESENTATIVES, )  
Plaintiff, )  
v. ) No. 1:19-cv-2379-KBJ  
DONALD F. McGAHN II, )  
Defendant. )

---

**DEFENDANT'S RESPONSE TO PLAINTIFF'S NOTICE  
REGARDING STATUS OF ACCOMMODATION PROCESS**

Defendant Donald F. McGahn II respectfully submits this response to the Committee's Notice of October 29, 2019 ("Notice"), ECF No. 41, pertaining to "the state of the parties' negotiations concerning an interview with Donald McGahn."

The Committee does not dispute that it filed this action and moved for summary judgment well before the accommodation process had run its course. Indeed, within two days of Defendant filing his cross-motion and opposition to the Committee’s motion for summary judgment (“Def.’s Mot.”), ECF No. 32, the Committee reached out to the White House Counsel’s Office to resume discussions about the terms and conditions on which an interview with Mr. McGahn might occur. See Reply in Supp. of Def.’s Mot. for Summ. J. (“Def.’s Reply”) at 29. In the following weeks, the parties held more than five discussions to explore whether they could reach a mutually acceptable accommodation for an interview with Mr. McGahn. *Id.* Thus, it simply is not the case that the parties “have been . . . ‘at an impasse’” throughout the pendency of this case, Notice at 1,

nor is it the case that the parties' inability to reach an agreement constitutes "stonewalling" by the White House. *Id.* at 3.<sup>1</sup>

Notwithstanding these points, Defendant agrees that the parties' negotiations have now reached a stage at which it is clear that fundamental disagreements remain between the parties and that, under the present circumstances, it appears unlikely the parties will reach a mutually acceptable accommodation. Defendant therefore withdraws his accommodation argument. *See* Def.'s Mot. at 43-46; Def.'s Reply at 27-30.

Dated: October 30, 2019

Respectfully submitted,

JOSEPH H. HUNT  
Assistant Attorney General

JAMES M. BURNHAM  
Deputy Assistant Attorney General

ELIZABETH J. SHAPIRO  
Deputy Branch Director

JAMES J. GILLIGAN  
Special Litigation Counsel

/s/ *Serena Orloff*  
SERENA M. ORLOFF (CA Bar No. 260888)  
STEVEN A. MYERS (NY Bar No. 4823043)  
ANDREW BERNIE (DC Bar No. 995376)  
Trial Attorneys  
United States Department of Justice  
Civil Division, Federal Programs Branch

---

<sup>1</sup> The Committee cites a recent decision of Chief Judge Howell, *In re App. of the Committee*, — F. Supp. 3d —, 2019 WL 5485221 (D.D.C. Oct. 25, 2019), *appeal filed*, No. 19-5288 (D.C. Cir. Oct. 28, 2019). The legal issue in that case is whether the Court can authorize disclosure of grand jury information under Fed. R. Crim. P. 6(e), and Judge Howell's decision—with which the government respectfully disagrees—sheds no light on the resolution of the many different legal issues in this case.

1100 L Street, NW  
Washington, DC 20005  
Tel: (202) 305-0167  
Fax: (202) 616-8470  
[serena.m.orloff@usdoj.gov](mailto:serena.m.orloff@usdoj.gov)

*Attorneys for Defendant*